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CLERK IDAHO

U. S. COURTS

DEC 20 1996

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

FILED
CAMERON S. BURKE
CLERK IDAHO

In re:

HIPWELL, TERRY,

Debtor.

Case NO. 96-02095

STIPULATION AND ORDER RE:
OBJECTION TO CLAIM

COMES NOW the Travelers Insurance Company ("Travelers"), secured creditor and party in interest, and the debtor, Terry Hipwell ("Hipwell") and stipulate and agree as follows:

1. On or about November 1, 1996, Hipwell filed an objection to Travelers' proof of claim. Hipwell objected on three bases:

- A. The inclusion of \$61,482.00 of a prepayment premium;
- B. The calculation of interest on a 365-day year rather than a 360-day year;
- C. The assessment of interest at the rate of 18%.

2. Hipwell and Travelers agree that the calculation of the claim of Travelers shall be as follows:

A. Travelers shall waive the assessment of a prepayment premium in the amount of \$61,482.00 from its claim amount for the purpose of calculating the amount which must be paid by Hipwell under a Chapter 12 plan. Should the amount owed to Travelers be prepaid at any time as a result of any action including a foreclosure action, refinancing, restructuring, prepayment of the plan or assignment of Travelers' interest, the prepayment premium will be assessed pursuant to contract.

B. The parties agree that interest has and will continue to be assessed based on a 365-day year due to the fact that the debtor is in default and Travelers assesses a per diem interest charge during the time of default.

C. Interest has accrued on the accelerated balance due from the date of acceleration to the date the bankruptcy was filed at the default interest rate of 18%. After the date of the bankruptcy filing, interest accrues at the contract rate of 9.625% until the date of plan of confirmation, at which point the terms of the plan govern the accrual of interest.

D. The parties agreed that the amount of attorneys' fees pre-petition would be \$12,772.00, and that the amount of attorneys' fees as of November 30, 1996, is approximately \$17,158.39.

3. Based upon this agreement, Hipwell has withdrawn his objection to Travelers' claim and Travelers has filed an amended proof of claim. Travelers' Amended Proof of Claim is attached hereto as Exhibit A, with the calculation sheet but not the other attachments attached.

Dated this 20th day of December, 1996.

By: 

Ramona S. Neal
Givens Pursley & Huntley, LLP
Counsel for The Travelers Insurance Company

By: 

Howard Foley
Foley & Freeman
Counsel for Terry L. Hipwell

ORDER

IT IS SO ORDERED.

Dated this _____ day of December, 1996.

Jim D. Pappas
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 1996 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Leslie M. Bock
Dillion Bosch Daw & Bock
242 N. 8th Street, Suite 200
Boise, ID 83702

☒ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Howard R. Foley
FOLEY & FREEMAN
77 E. Idaho Street, Suite 300
P.O. Box 10
Meridian, ID 83680

☒ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

John D. Harrington
White Peterson Pruss Morrow & Gigray
104 9th Avenue S
P.O. Box 247
Nampa, ID 83653-0247

☒ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Ronald D. Schoen
Standing Chapter 12 Trustee
P.O. Box 216
Payette, ID 83661

☒ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Office of the U.S. Trustee
304 N. 8th St., Suite 347
P.O. Box 110
Boise, ID 83701

☒ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight



Ramona S. Neal

PROOF OF CLAIM

<p style="text-align: center;">United States Bankruptcy Court District of Idaho</p> <p>Instructions: Complete this form and mail to: US Bankruptcy Court, 550 West Fort St. MSC 042, Boise, ID 83724</p>	<p style="text-align: center;">PROOF OF CLAIM Chapter (please check appropriate box): 7 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input checked="" type="checkbox"/> 13 <input type="checkbox"/></p> <p>Proof of Claim Form and Supporting Documents are to be filed in DUPLICATE on Chapter 12 and 13 cases.</p>	<p style="text-align: center;">THIS SPACE FOR COURT USE ONLY</p>
<p>In Re: (NAME OF DEBTOR): Terry L. Hipwell</p>	<p>CASE NUMBER: 96-02095</p>	
<p>NAME AND MAILING ADDRESS OF CREDITOR (The person or other entity to whom the debtor owes money or property):</p> <p>The Travelers Insurance Co. Karen Micheli 7170 N. Financial Drive, Suite 101 Presno, CA 93720-2900</p>	<p>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 USC §501.</p>	
<p>ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR</p>	<p>Check here if this claim <input type="checkbox"/> REPLACES <input checked="" type="checkbox"/> AMENDS a previously filed claim dated:</p>	
<p>1. BASIS FOR CLAIM: <input type="checkbox"/> Goods Sold <input type="checkbox"/> Service Performed <input checked="" type="checkbox"/> Money Loaned <input type="checkbox"/> Personal Injury/Wrongful Death <input type="checkbox"/> Taxes <input type="checkbox"/> Assignment <input type="checkbox"/> Retiree Benefits as defined in 11 U.S.C. §1114(a) <input type="checkbox"/> Wages, salaries and compensation; Social Security # _____</p> <p>Unpaid compensation for services performed from _____ to _____ DATE DATE</p>		
<p>2. DATE DEBT OCCURRED: 12/10/94</p>	<p>3. IF COURT JUDGMENT, DATE OBTAINED:</p>	
<p>4. CLASSIFICATION OF CLAIM. Under the Bankruptcy Code, all claims are classified as one or more of the following: a. Secured b. Unsecured Nonpriority c. Unsecured Priority It is possible for part of a claim to be in one category and part in another. COMPLETE THE APPROPRIATE BOX (or boxes) that best describes your claim and STATE THE AMOUNT OF THE CLAIM AT THE TIME THE CASE WAS FILED.</p>		
<p>SECURED CLAIM: \$ 480,030.45 *</p> <p>Attach evidence of perfection of security interest Brief description of Collateral: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other (Describe Briefly) Irrigation Equipment</p> <p>Amount of Advance and other charges at time case was filed included in secured claim above, if any: \$ _____</p>	<p>UNSECURED PRIORITY CLAIM: \$ _____</p> <p>SPECIFY THE PRIORITY OF THE CLAIM:</p> <p><input type="checkbox"/> Wages, salaries, or commissions (up to \$4000, earned not more than 90 days before the filing of the bankruptcy petition or removal of the debtor's business, whichever is earlier) 11 USC § 507(a)(3). <input type="checkbox"/> Contributions to an employer benefit plan - 11 USC § 507(a)(4). <input type="checkbox"/> Up to \$1800 of deposit account purchases, lease, or rental of property or services for personal, family, or household use - 11 USC § 507(a)(6). <input type="checkbox"/> Taxes or penalties of governmental units - 11 USC § 507(a)(7). <input type="checkbox"/> Other - Specify applicable paragraph of 11 USC § 507(a) _____</p>	
<p>UNSECURED CLAIM: \$ 0</p> <p>A claim is unsecured if there is not collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.</p>		
<p>5. TOTAL AMOUNT OF CLAIM AT THE TIME THE CASE WAS FILED:</p> <p>UNSECURED: \$ 0 SECURED: \$ 480,030.45 PRIORITY: \$ 0 TOTAL \$ 480,030.45</p> <p>* Plus additional costs, fees, and interest pursuant to 11 USC Section 506(b) from and after</p> <p><input type="checkbox"/> Check if claim includes charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges. 11/30/96 per Exhibit A</p>		
<p>6. CREDITS AND OFFSETS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to the debtor.</p>		<p style="text-align: center;">THIS SPACE FOR COURT USE ONLY</p>
<p>7. SUPPORTING DOCUMENTS: ATTACH COPIES OF SUPPORTING DOCUMENTS, such as promissory notes, purchase orders, invoices, assignments, deficiency documents, secured statements of financing sources, contracts, court judgments, or evidence of security interest. If the documents are not available, explain. If the documents are voluminous, attach a summary.</p>		
<p>DATE 12/13/96</p>	<p>Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any). Ramona S. Neal, Counsel for Travelers Insurance Co. <i>Ramona S. Neal</i> TELEPHONE NO 208-388-1200</p>	

DOF OF CLAIM CALCULATION
AND LIST OF ATTACHMENTS

Terry L. Hipwell
Case No. 96-02095
Chapter 12

I. Calculation of Amount Due:

Initial Principal Outstanding	\$369,170.88
Principal Due 10/1/95	\$5,829.12
Interest Due 10/1/95	\$18,046.88
Accrued Interest (10/1/95 - 12/4/95, 18% per annum)	<u>\$6,230.39</u>
 Accelerated Balance	 \$399,277.27
 Default Interest	 \$51,785.77
Interest (Interest for 8/24/96-12/6/96 (105 days @ \$105.29 per diem)	 \$11,055.45
Late Fees Due	\$753.57
Legal Fees Due (Approximate legal fees as of 11/30/96, both pre- and post-bankruptcy)	<u>\$17,158.39</u>
 TOTAL AMOUNT DUE AS OF 11/30/96	 \$480,030.45*

*Additional interest, fees and costs continue to accrue under Section 506(b).

II. List of Attachments:

1. Promissory Note dated December 20, 1994, in the original principal amount of \$375,000.00.
2. Mortgage dated December 20, 1994, recorded on 12/20/94 in the real property records for Canyon County as Instrument No. 9437580; and 12/20/94 in the real property records of Payette County, Instrument No. 253366.
3. Security Agreement dated December 20, 1994.
4. UCC-1 Financing Statement recorded as a fixture filing on 12/20/1994 in Payette County, Instrument No. 253367; and on 12/20/1994 in Canyon County, Instrument No. 9437581.